

I, LEONARD M. BRAUN, declare:

1. I am the Treasurer of CGS Industries, Inc. (“CGSI”). As part of the ordinary course of my duties, I supervise the maintenance of CGS’s records, including insurance policies issued by Charter Oak Fire Ins. Co. (“Charter Oak”) and any associated correspondence.

2. I know the facts set forth in this declaration to be true and correct based on my personal knowledge thereof and, if called to testify, I could and would testify competently thereto.

CGSI

3. CGSI is a corporation organized under the laws of the State of Florida. Its principal executive offices and place of business are located at Long Island City, New York. CGSI is a citizen of Florida and New York.

The Charter Oak Policy

4. On August 7, 2009 Charter Oak issued a Commercial Insurance Policy, No. Y-630-3322B071-C0F-09 (“the Policy”) covering the period August 31, 2009 through August 31, 2010 to CGS, the named insured. A copy of the policy is attached as **Exhibit “1.”**

5. CGSI purchased the Policy from an insurance broker, Tanenbaum-Harber Co. Inc. (“T-H”) in New York, New York.

6. CGSI performed its obligations under the policy by making policy premium payments from Long Island City, New York.

7. The policy was delivered to CGSI in New York.

The Five Four Suit

8. Five Four Clothing, Inc. and FiveFour Group LLC (collectively “Five Four”) commenced the *Five Four Clothing, Inc., et al. v. CGS Industries, Inc. et al.*, Case No. CV 09-9431 GW (CWx), United States District Court for the Central District of California action (the “*Five Four* action”) on December 23, 2009. A copy of the Original

Complaint ("Complaint") is attached as **Exhibit "2."**

9. Five Four filed its First Amended Complaint ("FAC") in the *Five Four* action on February 16, 2010. A copy of the FAC is attached as **Exhibit "3."**

10. Five Four filed its Second Amended Complaint ("SAC") in the *Five Four* action on March 24, 2010. CGSI is a named defendant in the SAC. A copy of the SAC is attached as **Exhibit "4."**

11. Five Four filed its Third Amended Complaint ("TAC") in the *Five Four* action against CGSI on July 28, 2010. A copy of the TAC is attached as **Exhibit "12."**

12. As a result of Charter Oak's denial of coverage of the *Five Four* action, CGSI has had to defend the *Five Four* action at its own expense. Those expenses have exceeded \$75,000.

Charter Oak's Denial of Defense


13. On behalf of CGSI I provided email notice of the *Five Four* action to Charter Oak through CGSI's insurance broker, T-H. On January 25, 2010, T-H acknowledged that it forwarded the claim to Charter Oak. A copy of T-H's acknowledgement email is attached as **Exhibit "11."**

14. Charter Oak denied a defense of the *Five Four* action on February 18, 2010. A copy of the denial letter is attached as **Exhibit "5."**

15. On behalf of CGSI I provided email notice of the TAC to Charter Oak through CGSI's insurance broker on August 3, 2010.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed at Long Island City, New York on this 3rd day of August, 2010.



LEONARD M. BRAUN

CERTIFICATE OF SERVICE

I hereby certify that on August 9, 2010, the foregoing document was filed with the Clerk of the Court and served in accordance with the Federal Rules of Civil Procedure, and/or the Eastern District's Local Rules, and/or the Eastern District's Rules on Electronic Service upon the following parties and participants:

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